

Rule 1.11. ~~Successive government and private employment.~~ Special Conflicts of Interest for Former and Current Government Employees.

(a) Except as law may otherwise expressly permit, a lawyer who has formerly served as a public officer or employee of the government: ~~shall not represent a private client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency consents after consultation. No lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:~~

(a)(1) is subject to Rule 1.9(c); and

(a)(2) shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.

(b) When a lawyer is disqualified from representation under paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

(b)(1) If the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(b)(2) Written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this Rule.

~~(b)~~ (c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. ~~unless the appropriate government client consents after consultation with the lawyer.~~ As used in this Rule, the term “confidential government information” means information that has been obtained under governmental authority and which at the time the Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is

32 screened from any participation in the matter and is apportioned no part of the fee  
33 therefrom.

34 (ed) Except as law may otherwise expressly permit, a lawyer serving as a public  
35 officer or employee ~~shall not~~:

36 ~~(1) Participate in a matter in which the lawyer participated personally and~~  
37 ~~substantially while in private practice or nongovernmental employment, unless under~~  
38 ~~applicable law no one is, or by lawful delegation may be, authorized to act in the~~  
39 ~~lawyer's stead in the matter; or~~

40 ~~(2) Negotiate for private employment with any person who is involved as a party or~~  
41 ~~as attorney for a party in a matter in which the lawyer is participating personally and~~  
42 ~~substantially, unless the appropriate government client consents after consultation with~~  
43 ~~the lawyer.~~

44 (d)(1) is subject to Rules 1.7 and 1.9; and

45 (d)(2) shall not:

46 (d)(2)(i) participate in a matter in which the lawyer participated personally and  
47 substantially while in private practice or nongovernmental employment, unless the  
48 appropriate government agency gives its informed consent, confirmed in writing; or

49 (d)(2)(ii) negotiate for private employment with any person who is involved as a party  
50 or as lawyer for a party in a matter in which the lawyer is participating personally and  
51 substantially, except that a lawyer serving as a law clerk to a judge, other adjudicative  
52 officer or arbitrator may negotiate for private employment as permitted by Rule 1.12(b)  
53 and subject to the conditions stated in Rule 1.12(b).

54 (de) As used in this Rule, the term "matter" includes:

55 (e)(1) Aany judicial or other proceeding, application, request for a ruling or other  
56 determination, contract, claim, controversy, investigation, charge, accusation, arrest or  
57 other particular matter involving a specific party or parties; and

58 (e)(2) Aany other matter covered by the conflict of interest rules of the appropriate  
59 government agency.

60 ~~(e) As used in this Rule, the term "confidential government information" means~~  
61 ~~information which has been obtained under governmental authority and which, at the~~  
62 ~~time this Rule is applied, the government is prohibited by law from disclosing to the~~

~~public or has a legal privilege not to disclose and which is not otherwise available to the public.~~

Comment

~~This Rule prevents a lawyer from exploiting public office for the advantage of a private client. It is the counterpart of Rule 1.10(b), which applies to lawyers moving from one firm to another.~~

[1] A lawyer representing a government agency, whether employed or specifically retained by the government, who has served or is currently serving as a public office or employee is personally subject to the Rules of Professional Conduct, including the prohibition against representing adverse interests concurrent conflicts of interest stated in Rule 1.7 and the protections afforded former clients in Rule 1.9. In addition, such a lawyer is may be subject to Rule 1.11 and to statutes and government regulations regarding conflicts of interest. Such statutes and regulations may circumscribe the extent to which the government agency may give consent under this Rule. See Rule 1.0(e) for the definition of informed consent.

[2] Paragraphs (a)(1), (a)(2) and (d)(1) restate the obligations of an individual lawyer who has served or is currently serving as an officer or employee of the government toward a former government or private client. Rule 1.10 is not applicable to the conflicts of interest addressed by this Rule. Rather, paragraph (b) sets forth a special imputation rule for former government lawyers that provides for screening and notice. Because of the special problems raised by imputation within a government agency, paragraph (d) does not impute the conflicts of a lawyer currently serving as an officer or employee of the government to other associated government officers or employees, although ordinarily it will be prudent to screen such lawyers.

[3] Paragraphs (a)(2) and (d)(2) apply regardless of whether a lawyer is adverse to a former client and are thus designed not only to protect the former client, but also to prevent a lawyer from exploiting public office for the advantage of another client. For example, a lawyer who has pursued a claim on behalf of the government may not pursue the same claim on behalf of a later private client after the lawyer has left government service, except when authorized to do so by the government agency under paragraph (a). Similarly, a lawyer who has pursued a claim on behalf of a private client

94 may not pursue the claim on behalf of the government, except when authorized to do so  
95 by paragraph (d). As with paragraphs (a)(1) and (d)(1), Rule 1.10 is not applicable to  
96 the conflicts of interest addressed by these paragraphs.

97 [4] Where This Rule represents a balancing of interests. On the one hand, where  
98 the successive clients are a public-government agency and a private-another client,  
99 public or private, the risk exists that power or discretion vested in that agency a public  
100 authority might be used for the special benefit of a private-the other client. A lawyer  
101 should not be in a position where benefit to a private-the other client might affect  
102 performance of the lawyer's professional functions on behalf of the governmentpublic  
103 authority. Also, unfair advantage could accrue to the private-other client by reason of  
104 access to confidential government information about the client's adversary obtainable  
105 only through the lawyer's government service. However On the other hand, the rules  
106 governing lawyers presently or formerly employed by a government agency should not  
107 be so restrictive as to inhibit transfer of employment to and from the government. The  
108 government has a legitimate need to attract qualified lawyers as well as to maintain high  
109 ethical standards. Thus a former government lawyer is disqualified only from particular  
110 matters in which the lawyer participated personally and substantially. The provisions for  
111 screening and waiver in paragraph (b) are necessary to prevent the disqualification rule  
112 from imposing too severe a deterrent against entering public service. The limitation of  
113 disqualification in paragraphs (a)(2) and (d)(2) to matters involving a specific party or  
114 parties, rather than extending disqualification to all substantive issues on which the  
115 lawyer worked, serves a similar function.

116 [5] When the client is an agency of a lawyer has been employed by one government  
117 agency and then moves to a second government agency, it may be appropriate to treat  
118 that second agency should be treated as a private-another client for purposes of this  
119 Rule if the lawyer thereafter represents an agency of another government, as when a  
120 lawyer represents is employed by a city and subsequently is employed by a federal  
121 agency. However, because the conflict of interest is governed by paragraph (d), the  
122 latter agency is not required to screen the lawyer as paragraph (b) requires a law firm to  
123 do. The question of whether two government agencies should be regarded as the same

or different clients for conflict of interest purposes is beyond the scope of these Rules.  
See Rule 1.13 Comment [6].

[6] Paragraphs ~~(a)(1) and (b)~~ and (c) contemplate a screening arrangement. See Rule 1.0(k) (requirements for screening procedures). These paragraphs do not prohibit a lawyer from receiving a salary or partnership share established by prior independent agreement. ~~They prohibit, but that lawyer may not receive compensation~~ directly relating the attorney's compensation to the fee in the matter in which the lawyer is disqualified.

[7] Notice, including a description of the screened lawyer's prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

~~Paragraph (a)(2) does not require that a lawyer give notice to the government agency at a time when premature disclosure would injure the client; a requirement for premature disclosure might preclude engagement of the lawyer. Such notice is, however, required to be given as soon as practicable in order that the government agency will have a reasonable opportunity to ascertain that the lawyer is complying with Rule 1.11 and to take appropriate action if it believes the lawyer is not complying.~~

[8] Paragraph ~~(b)(c)~~ operates only when the lawyer in question has knowledge of the information, which means actual knowledge; it does not operate with respect to information that merely could be imputed to the lawyer.

[9] Paragraphs (a) and ~~(ed)~~ do not prohibit a lawyer from jointly representing a private party and a government agency when doing so is permitted by Rule 1.7 and is not otherwise prohibited by law.

~~Paragraph (c) does not disqualify other lawyers in the agency with which the lawyer in question has become associated.~~

[10] For purposes of paragraph (e) of this Rule, a "matter" may continue in another form. In determining whether two particular matters are the same, the lawyer should consider the extent to which the matters involve the same basic facts, the same or related parties, and the time elapsed.